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JOINT POWERS AGREEMENT

AGE00040002

1 James K. ...
2 Secretary of State

3 By: [Signature] Greenwood
4 Secretary of State

STATE OF ARIZONA
AND THE
FEDERAL LAND MANAGEMENT AGENCIES
OF THE DEPARTMENT OF THE INTERIOR
AND
USDA FOREST SERVICE

January, 2004

INTRODUCTION

Fire management in the nation's wildlands continues to be a matter of concern to the American public and to the land management bureaus of the Department of the Interior and the Department of Agriculture, United States Forest Service, and the State of Arizona, herein after called the "Cooperating Agencies". Because wildland fire recognizes no boundaries, productive cooperation and *efficient* interagency operations between these agencies is, essential.. Past cooperation in all aspects of fire management has benefited all agencies. More progress can be made in fire management planning, fire use,, and fire suppression by all agencies by closer cooperation and coordination among the agencies.

PURPOSE

The purpose of this Joint Powers Agreement ("Agreement") is to provide mutual wildland fire management assistance and cooperation between the State Forester, who shall serve as a liaison for state agency resources mobilized under state authority, and the Cooperating Federal Agencies.

RECITALS

- A. State and those private lands for which the State of Arizona is responsible for wildland fire protection, and Federal Lands for which the Federal Government is responsible, are intermingled and sometimes adjacent to each other throughout the State of Arizona, Wildland fires on the lands for which one agency is responsible may present a threat to lands for which the other agency is responsible;
- B Congress has directed the Secretaries of Interior and Agriculture to work with the *governors on a long-term strategy to deal with the wildland fire and hazardous fuels situation, as well as needs for habitat restoration and rehabilitation in the nation (P. L. 106-291), with the expectation that a collaborative structure, with the states and local governments as full partners, will be the most efficient and effective way of implementing a long-term program;*

- 1
2
3 C. The Federal Government maintains a fire management organization and
4 coordinates with other fire protection organizations for protection of Federal
5 Lands within the United States. The State of Arizona, through the State Forester,
6 maintains a fire management organization and coordinates with other fire
7 protection organizations for protection of State Lands and on those private lands
8 which the State has the authority to prevent and suppress wildfires;
9
10 D. It is to the mutual advantage of the State of Arizona and the Federal Government
11 to coordinate efforts for the prevention, detection, and suppression of wildfires,
12 and for fuels management in and adjacent to their areas of responsibility, to limit
13 duplication and to improve efficiency and effectiveness;
14
15 E. It is the intent of the parties hereto that State Resources be available to assist in
16 fire management activities on Federal Lands, and on other lands upon which the
17 Federal Government provides fire suppression support including other States,
18 Canada, and Mexico. The State has contracts with a significant number of local
19 cooperators that assist with fire management activities, and the State will utilize
20 those cooperators, to the extent allowed by the individual contracts, in fulfilling
21 the State's obligations under this Agreement;
22
23 F. It is the intent of the parties hereto that Federal resources be available to assist
24 in fire management activities on all State Lands and on those private lands which
25 the State has the authority to prevent and suppress wildfires.
26
27

28 **FEDERAL AUTHORITY**

29 The authority for Federal agencies or organizations is as follows:
30
31

32 **Reciprocal Fire Protection Act of May 27, 1955** (69 Stat. 66; 42 U.S.C. §1856a)
33 (Federal Agencies)

34 **Economy Act of June 30, 1932** (31 U.S.C. § 1535 as amended) (Federal Agencies)

35 **Disaster Relief Act of May 22, 1974** (88 Stat. 143; 42 U.S.C. § 51210 as amended)
36 (Federal Agencies)

37 **Robert T. Stafford Disaster Relief and Emergency Assistance Act** (P.L. 93-288)
38 (Federal Agencies)

39 **National Indian Forest Resources Management Act** (P.L. 101-630, Title III) (Interior
40 Agencies)

41 **Taylor Grazing Act of June 28, 1934** (48 Stat. 1269; 43 U.S.C. § 315) (BLM, FS)

42 **Granger-Thye Act of April 24, 1950** (16 U.S.C. § 572) (FS)

43 **Cooperative Funds and Deposits Act of Dec. 12, 1975** (P.L. 94-148, 16 U.S.C. §
44 565a-1-3) (FS)

45 **Cooperative Forestry Assistance Act of July 1, 1978, as amended** (16 U.S.C. §

2101) (FS)
Cooperative Funds Act of June 30, 1914 (16 U.S.C. § 498) (FS)
Federal Land Policy and Management Act of Oct. 21, 1976 (90 Stat. 2743; 43 U.S.C. §§ 1701 et seq.) (BLM)
National Park Service Organic Act as amended, (67 Stat. 495; 16 U.S.C. §1b and 1g) (NPS)
National Wildlife Refuge Administration Act of 1966 (80 Stat. 927, as amended; 16 U.S.C. §§ 668dd-668ee (FWS)
National Wildlife Refuge System Improvement Act of 1997 (P.L. 105-57) (FWS)
Protection Act of September 20, 1922 (42 Stat. 857; 16 U.S.C. § 594) (Interior Agencies)
Federal Property and Administrative Services Act of 1949 (40 U.S.C. § 471) (Interior Agencies)
Federal Grant and Cooperative Agreement Act (96 Stat. 1003; 31 U.S.C. § 6301 through 6308) (Interior Agencies)
Federal Emergency Management Agency, Disaster Assistance; Fire Management Assistance Grant Program, 44 CFR, Part 204. (Federal Agencies)
Agreements between Secretaries of Agriculture and Interior or other federal agencies having jurisdiction over forest land, 16 U.S.C. § 583c. (Federal Agencies)
Expenditure of Appropriations by Bureau of Indian Affairs, 25 U.S.C. § 13. (Federal Agencies)
Agency Agreements, 31 U.S.C. § 1535. (Federal Agencies)
Fire Suppression Grants, 42 U.S.C. § 5187. (State)

STATE AUTHORITY

Governor - **Arizona Revised Statutes** §§ 26-301 through -318; 35-192; Executive Order 98-1.

Arizona State Land Department/State Forester - **Arizona Revised Statutes** §§ 35-192; 37-102(D); and 37-621 through -624.

This is a Joint Powers Agreement pursuant to ARS 37-623 and an Intergovernmental Agreement pursuant to A.R.S. § 11-952.

NOW, THEREFORE, the parties hereto, in consideration of the covenants and conditions hereinafter set forth, do agree as follows:

OBJECTIVES

- A. To provide a basis for cooperation between the agencies on all aspects of wildland fire management.
- B. To facilitate the exchange of personnel, equipment, supplies, services, and funds between the agencies in support of agency wildland fire management activities.

PROGRAM COVERAGE

The agencies agree to cooperate in the full spectrum of wildland fire management activities, and to facilitate the efficient use of personnel, equipment, supplies, services and other resources. Activities may include, but are not limited to:

- A. Prevention of human-caused fires,
- B. Training of personnel to commonly accepted standards,
- C. Presuppression activities,
- D. Suppression of wildland fires,
- E. Emergency stabilization and restoration of areas burned by wildland fires,
- F. Development and exchange of technology and data,
- G. Development and exchange of cost information,
- H. Fuels management, including prescribed fire,
- I. Establishment of interagency fire management resources,
- J. Development of annual local operating plans,
- K. Interagency fire management projects

OBLIGATIONS OF ASSISTING AND RESPONSIBLE AGENCIES.

All Wildland Fire Management Services provided will be consistent with the Responsible Agency's fire management policies and the terms of this Agreement. When Non-reimbursable Wildland Fire Management Services are furnished by an Assisting Agency and the Assisting Agency recognizes a wildland fire is on or threatening the lands of another Responsible Agency, the Assisting Agency shall notify the Responsible Agency as soon as reasonably possible. The Responsible Agency may or may not request that the Assisting Agency continue providing Wildland Fire Management Services. All Wildland Fire Management Services provided by an Assisting Agency pursuant to a Responsible Agency's request for assistance will be Reimbursable. Wildland Fire Management Services provided by an Assisting Agency prior to a Responsible Agency's request for assistance are non-reimbursable.

MANAGEMENT OF BOUNDARY FIRES

When two or more Cooperating Agencies are providing Wildland Fire Management Services in response to a Boundary Fire, it is agreed:

- A. The Cooperating Agencies involved shall decide upon and designate in writing an Incident Commander(s) or establish a unified command. When making this designation, the Cooperating Agencies shall consider the lands threatened, the predicted size and complexity of the fire involved, and the qualifications, as determined by the National Wildfire Coordinating Group, Incident Qualifications System Guide 310-1, of available Incident Commander personnel.
- B. The Cooperating Agencies involved will participate jointly in strategy sessions with the Incident Commander to reach mutual agreement on strategy and tactics, consistent with the policy guidelines of the Cooperating Agencies.
- C. All Cooperating Agencies responsible for lands affected by the Boundary Fire will furnish the Incident Commander with resource data and values for analyzing suppression alternatives.
- D. General Provisions for Cost-Share of Boundary Fires:
 1. A Cost-Share Agreement addressing all relevant Wildland Fire Management Services will be prepared by the State and the Lead Cooperating Federal Agency when there is a wildfire burning on or threatening lands for which the State and one or more of the Cooperating Federal Agencies are responsible. The Lead Cooperating Federal Agency will consult with and represent the involved Cooperating Agencies.
 2. The Cost-Share Agreement will be provided to the Incident Commander with the Delegation of Authority or as soon as practicable. The Cost-Share Agreement may be amended with the mutual consent of the State and Lead Cooperating Federal Agency.
 3. Cost-Share Distribution
 - A. Costs of Wildland Fire Management Services provided in response to a Boundary Fire will typically be allocated to the State and a Lead Cooperating Federal Agency on a prorated basis, as determined by the percent of area burned under each agency's responsibility.
 - B. When it is necessary to provide an unusually high amount of Wildland Fire Management Services to protect the resources and lands of either the State or one of the Cooperating Federal Agencies, and with the mutual consent of the State and the Lead

Cooperating Federal Agency, costs may be allocated based on the actual costs for those resources that were deployed specific to the State's and Cooperating Federal Agencies areas of responsibility.

C. Costs for resources that can not be identified as having been deployed specifically on the State's and Cooperating Federal Agencies areas of responsibility, such as an Incident Management Team or incident camp facilities, will be allocated to the State and Cooperating Federal Agencies on a prorata distribution equal to either the percent of area burned under each agency's responsibility (A above) or the percent of costs that can be identified as specific to either the State or Cooperating Federal Agencies (B above).

4. When Emergency Community Protective Measures are significant and distinct from other Wildland Fire Management Services, such as those undertaken by a community before, during and following an incident for mass evacuations, search and rescue, emergency medical care, emergency mass care and shelter, security in the community, providing temporary facilities and food and water at distribution centers, and activation of State or local emergency operations centers to coordinate and direct the community response to an incident, these costs may be excluded from the Wildland Fire Management Services cost-share agreement and addressed separately by the State and the Federal Emergency Management Agency.
5. Each party to this agreement waives all claims against every other party for compensation for any loss, damage, personal injury, or death occurring in consequence of the performance of this agreement.
6. Rehabilitation costs, other than the immediate restoration and repair of suppression damages, are the responsibility of the Jurisdictional Agency and outside the scope of the Wildland Fire Management Services Cost-Share Agreement. Terms and conditions for cooperative rehabilitation and burned area restoration activities will be specified in a separate agreement.
7. When the Cooperating Agencies determine, by mutual consent, that the fire is no longer a Boundary Fire because it has been controlled on the lands of one Cooperating Agency and is only burning on or threatening the other Cooperating Agency(ies), costs will only be shared for the time that the incident was a Boundary Fire, based on the provisions in 3 above.

- 1
2 8. The State Forester may enter into cost-share agreements with a Lead
3 Cooperating Federal Agency on behalf of the State for amounts not
4 exceeding \$10,000,000 in appropriated and allotted monies for the
5 purposes specified in the Agreement. Cost-share agreements exceeding
6 \$10,000,000 in appropriated and allotted monies for the purposes
7 specified in the Agreement must be approved by the Governor.
8

9 **OTHER COOPERATIVE ACTIVITIES**

10
11 The Cooperating Agencies may jointly conduct other projects. These projects may be
12 activities such as preparedness, post-fire rehabilitation or restoration, fuels
13 management, prescribed fire, wildland/urban interface fire coordination, smoke
14 management and other beneficial efforts. Such projects will be conducted through other
15 agreements and/or specific project plans which document the purpose of the project,
16 objectives, agencies participating in the project, approved cost-share, and the role of
17 each agency.
18

19 **Reporting and Assistance.**

20
21 Employees of each Cooperating Agency shall take immediate action to report any
22 wildland fire discovered by them that occurs on or threatens the lands of other
23 Cooperating Agencies. Cooperating Agencies will assist in providing Wildland Fire
24 Management Services when called upon by other Cooperating Agencies unless it would
25 deplete the Assisting Agency's resources to such a level that would jeopardize the
26 Assisting Agency's ability to protect the lands for which it is responsible.
27

28 **Fire Investigation and Law Enforcement.**

29
30 Initial attack forces will protect, gather and preserve evidence concerning the cause of
31 the fire. The Responsible Agency must provide the initial determination of the cause and
32 provide a detailed report of suppression costs to the Jurisdictional Agency in a timely
33 fashion. The Jurisdictional Agency is responsible for determining the party responsible
34 for causing the fire, and for obtaining costs, as well as documenting, billing, collecting
35 and distributing funds. In the case of wildland fires that burn on land of more than one
36 Cooperating Agency, the Cooperating Agencies will coordinate law enforcement efforts
37 to the extent feasible. Any appropriate party having jurisdiction may attempt collection of
38 costs to the extent allowed by law from the parties responsible for causing the fire.
39

1 **GENERAL PROVISIONS**

2
3 **Definitions**

- 4
5
6 A. “Annual Operating Plans” shall mean plans prepared each year by April 1, by
7 and for each Arizona State Land Department Fire Management Division
8 Administrative District, and agreed to by the local federal administrative units.
9 The plans will contain items that are pertinent to this Agreement and subject to
10 change on an annual basis.
- 11
12
13
14 B. “Assisting Agency” shall mean a Federal Cooperating Agency or the State
15 Forester that is providing Wildland Fire Management Services to the Responsible
16 Agency.
- 17
18 C. “Boundary Fire” shall mean a wildfire burning on or threatening lands under the
19 responsibility of more than one Cooperating Agency.
- 20
21 D. “Cooperating Agency” shall mean the State Forester as agent for the State of
22 Arizona on non-federal lands and all Cooperating Federal Agencies.
- 23
24 E. “Cooperating Federal Agencies” shall mean:
25
26 Department of Agriculture, Forest Service
27 Department of the Interior,
28 Bureau of Land Management,
29 Bureau of Indian Affairs,
30 National Park Service,
31 U.S. Fish & Wildlife Service
32
- 33
34 F. “State Agency Resources” shall mean:
35
36 Arizona State Land Department/State Forester
37 Arizona State Parks Board
38 Arizona Game & Fish Department
39 Arizona Department of Environmental Quality
40 Arizona Department of Emergency and Military Affairs
41 Arizona Department of Transportation
42 Arizona Department of Public Safety
43 Arizona Department of Corrections
44 Arizona Rural and Municipal Fire Departments
45
- 46
47 G. “Incident” shall mean an occurrence that is either human-caused or a natural
48 phenomenon that requires action or support by emergency service personnel to
49 prevent or minimize loss of life or damage to property and/or natural resources.

- 2 H. “Incident Commander” shall mean individual responsible for the management of
3 all incident operations at the incident site.
- 4
- 6 I. “Initial Attack Force” shall mean the first emergency responders that arrives at a
7 wildfire to protect lives and property, and prevent further extension of the fire.
- 8
- 10 J. “Jurisdictional Agency” shall mean the federal agency that by law has general
11 management authority over a given area or the State Forester, when non-federal
12 lands are involved.
- 13
- 14 K. “Lead Cooperating Federal Agency” shall mean the federal agency responsible
15 for the federal costs, as determined by the Cooperating Federal Agencies, of a
16 Boundary Fire, and is the appropriate federal agency to enter into a cost-share
17 agreement with the State.
- 18
- 20 L. “Non-Reimbursable Wildland Fire Management Services” shall mean Wildland
21 Fire Management Services provided by an Assisting Agency prior to notification
22 and request for assistance by the Responsible Agency.
- 23
- 24 M. “Reimbursable Wildland Fire Management Services” shall mean Wildland Fire
25 Management Services provided by an Assisting Agency pursuant to the request
26 of the Responsible Agency.
- 27
- 29 N. “Responsible Agency” shall mean the Federal Cooperating Agency or the State
30 Forester, having responsibility, by Federal law, State law or contract, for
31 providing Wildland Fire Management Services to a given area.
- 32
- 34 O. “Wildland Fire Management Services” shall mean wildland fire preparedness,
35 suppression and emergency restoration and repair of suppression damages,
36 logistical support, and facilitating services as used by all agencies.
- 37

38 Reimbursement Procedures

39

41 **Appropriations:** Nothing in this Agreement shall be construed as obligating any party
42 to expend money in excess of appropriations authorized by state or federal laws. This
43 Agreement is contingent upon sufficient funds and appropriations being made available
44 by the Arizona Governor or Legislature and appropriations for Federal Agencies being
45 made available by the United States Congress.

46

47 **Reimbursable Assistance:** Reimbursable Assistance refers to those fire suppression
48 resources that are provided by a Support Agency and paid for by the Jurisdictional
49 Agency or by the Responsible Agency pursuant this Agreement. Reimbursable
50 Assistance resources must be requested by the Protecting Agency, or as provided for in
51 Dispatch or Initial Attack Agreements, and must be recorded by the resource order

process within the dispatching systems. Resources not documented in this manner are not reimbursable. Except as otherwise provided, all costs incurred as the result of an incident and documented as stated above are generally reimbursable, such as but not limited to:

- A. Travel, salary, and per diem of individuals assigned to the incident.
- B. Additional support dispatching services requested through a resource order.
- C. Cost of equipment in support of the incident, contract equipment costs and operating costs for Agency equipment.
- D. Operating supplies for equipment assigned to the incident, such as fuel or oil.
- E. Aircraft, airport fees, foam and retardant costs.
- F. Agency-owned equipment and supplies lost, damaged or expended.
Equipment shall be returned in same condition as received, normal wear and tear expected.
- G. Cost of reasonable and prudent supplies expended in support of the incident.
- H. Charges from the State for state-controlled resources such as inmate crews, National Guard resources and local government resources, including county and municipal fire departments.
- I. Indirect/Administrative Costs as provided for in this Agreement, see Indirect Rates for Overhead and Administration. (Exhibit B)

No New Capital Outlay: No property other than reimbursable or expendable materials actually consumed during fire suppression activities shall be allowed as a result of the joint exercise of powers under this Agreement (i.e., no capital outlay for new items such as chainsaws, water pumps, generators, computers and so forth).

Reimbursement Rates: Reimbursement rates for resources provided by Federal Agencies shall comply with rules in the most current Interagency Incident Business Management Handbook or that Agency's procedures. Reimbursement rates for local government resources shall comply with the State approved rates.

Procurement: Whenever the State is responsible for the management of an incident (including an incident within the direct protection area of a Federal Agency), the State shall comply with applicable state laws covering procurement.

1 **Financial Plan:** The Financial Plan (Exhibit B) shall consist of reference material and
2 back-up documentation that shall assist in the conduct of this Agreement. The Financial
3 Plan shall include a list of contacts, agency addresses, billing report indexes and forms
4 pertinent to each Agency. The Financial Plan shall not supercede the terms of this
5 Agreement and shall be consistent with this Agreement. Each Agency's local fiscal
6 officer shall have the responsibility for the development of the Financial Plan. The
7 Financial Plan shall be reviewed and revised as necessary. The State shall be
8 responsible for maintaining any changes and informing each Agency of revisions. If no
9 revision is made then the existing Financial Plan shall remain in effect.

10
11 **General Billing Procedures:** General Billing Procedures for Fire Suppression Billings:

- 12
13 A. When the State is the Supporting Agency, the State shall bill the Federal
14 Agency who has jurisdictional responsibility. Each Federal Agency shall
15 submit its billings to the State when the State is the Jurisdictional Agency.
16
17 B. Federal Agencies shall not bill each other for fire suppression support.
18
19 C. Billing amounts do not apply to Initial Attack Exchange Fire Protection.
20
21 D. Agencies shall share their respective individual incident resource order
22 numbers for cross-referencing purposes.

23
24 **Billing Estimates/Timeframes:** On fires where costs are incurred pursuant to this
25 Agreement, the Billing Agency shall submit a bill or estimate for reimbursement as soon
26 as possible, but not later than 180 days after the fire is controlled. If the total cost is not
27 known at the time of initial billing, a partial bill, so identified, may be submitted. A final
28 bill, so identified, shall be issued within 270 days after control of the fire. After the final
29 billing has been sent, and if additional costs are identified, a supplemental billing may be
30 issued if agreeable to applicable parties. This supplemental billing must be submitted
31 within 360 days after the fire is controlled, at which time the incident is closed out.

32
33 **Billing Estimates/Timeframes for Fire Incidents with Federal Emergency**
34 **Management Agency (FEMA) Approved Grants:** If an incident has been approved as
35 a Fire Management Assistance grant through FEMA, the State shall send a letter to the
36 Federal Agency with jurisdiction advising them that the incident is FEMA reimbursable.
37 The bill for reimbursement must be submitted to the State within 120 days from the
38 designated incident period date.

39
40 **Billing Content:** Bills shall be identified by funding code, fire name, location,
41 jurisdictional unit and appropriate order number, and shall be supported by adequate
42 documentation, including applicable Cost Share Agreements. Each bill shall be certified
43 by the Agency to be true and correct.

44
45 **Disputed Billings:** Written notice that a bill is contested shall be mailed to the Billing

1 Agency within 60 days of issuance of the final bill, and shall fully explain the area of
2 dispute. Contested items shall be resolved not later than 60 days following receipt of
3 written notice. The uncontested portion of the bill shall be paid and a new bill shall be
4 issued for the contested amount.

5
6 **Payments:** Payments shall refer to the bill number and fire name and shall be sent to
7 the appropriate billing address as indicated in the Financial Plan, Exhibit C.

8
9 **Payment Due Dates:** All bills shall have a payment due date 60 days after the date of
10 receipt. If payment cannot be made before the 60 days expire, then the Agency may
11 request a 30-day extension, with oral or written justification.

12
13 **Notification of Unpaid Obligations:** So that the State may encumber funds, the
14 Federal Agencies shall submit an estimate of unpaid obligation figures to the State for
15 the state fiscal year by June 15th. So that Federal Agencies may obligate funds, the
16 State shall submit an estimate of unpaid obligation figures to the appropriate Federal
17 Agency for the federal fiscal year by September 15th.

18 19 **Annual Meetings.**

20
21 Before the start of the fire season each year, representatives of the agencies hereto will
22 meet with the State District Foresters to prepare and adopt Annual Operating Plans.
23 The Arizona State Land Department Fire Management Division will be responsible for
24 calling these meetings.

25 26 27 **Qualifications.**

28
29 Employees of all Cooperating Agencies and Cooperating Federal Agencies shall meet
30 or exceed all applicable National Wildfire Coordinating Group 310-1 standards for
31 training, experience, and fitness for the job(s) they perform on each other's wildland fire
32 management services, and all agencies will maintain appropriate documentation.

33
34 **Personal Protective Equipment.** Personal protective equipment used by agency
35 personnel under this agreement shall be appropriate for wildland fire suppression
36 operations, according to the current National Wildland Fire Coordination Group
37 standards or the National Fire Protection Association Standards, NFPA 1977.

38 39 **Equipment.**

40
41 Equipment loaned by one Cooperating Agency to another shall become the
42 responsibility of the borrower, and shall be returned in the same condition as when
43 received; provided, however, that reasonable wear and tear is expected. Lost or
44 destroyed items shall be replaced or the Responsible Agency shall reimburse the
45 Assisting Agency for the fair market value of the equipment.

46 **Liaison.**

1
2 The Arizona State Forester is the liaison between the State Agency Resources and the
3 Cooperating Federal Agencies.
4

5 **Insurance and Employment Benefits**
6

7
8 A. For purposes of employment status and benefits, including Workmen's
9 Compensation coverage, employees of the State of Arizona assisting
10 Cooperating Federal Agencies at the request of the Federal Agencies shall be
11 treated as State employees.
12

13
14 B. For the purposes of employment status and benefits including Federal
15 Employees' Compensation Coverage, employees of the Federal Government
16 assisting Cooperating State Agencies at the request of the State shall be treated
17 as employees of the Federal Government.
18

19 **Disposition, Division or Distribution of Property; Return of Surplus Funds:** Upon
20 expiration or termination of this Agreement, if any party has property or funds in its
21 possession belonging to the other, the same shall be returned in proportion to the parties'
22 original contribution.
23

24 **No Indemnification.**
25

26 No party to this Agreement agrees to indemnify any other party or hold harmless any
27 other party from liability hereunder. However, if the common law or a statute provides
28 either right to indemnity and/or a right to contribution to any party to this agreement,
29 then the right to pursue one or both of these remedies is preserved.
30

31 **Liability to Third Parties.**
32

33 Each party to this Agreement will be responsible for the acts and omissions of its
34 officers and employees which result in damage or injuries to third parties to the same
35 extent that the party may be responsible under applicable laws, rules and regulations.
36

37 **Members of Congress.**
38

39 No member of or delegate to Congress or Resident Commissioner shall be admitted to
40 any share or part of this Joint Powers Agreement, or to any benefit that may arise
41 therefrom; but this provision shall not be construed to extend to this Agreement if made
42 with a corporation for its general benefit.

1 **Non-Discrimination.**

2
3 The Cooperating Agencies shall comply with all state and federal statutes relating to
4 nondiscrimination including, but not limited to: (a) the Civil Rights Act of 1964, which
5 prohibits discrimination on the basis of race, color, handicap, or national origin; (b) Title
6 IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and
7 1685-1686) which prohibits discrimination on the basis of sex; and Arizona Executive
8 Order 99-4.
9

10 **Third Party Antitrust Violations.**

11
12 The Federal Agencies will reimburse the State of Arizona recoveries from any claim for
13 overcharges reimbursed that resulted from antitrust violations by third parties to the
14 extent that such overcharges were previously billed and collected from the State of
15 Arizona These recoveries will be limited to the extent that they were reimbursed by the
16 State of Arizona
17

18 **No interest in property.**

19
20 No interest in the real or personal property of any Cooperating Agency shall be acquired
21 as a result of the joint exercise of powers under this Joint Powers Agreement.
22

23 **Record Keeping.**

- 24
25 A. Any pertinent documents relating to reimbursable expenses paid to the State for
26 that calendar year shall be available for inspection and audit for the appropriate
27 period as designated by each federal agency.
28
29 B. Pursuant to A.R.S. § 35-214, all books, accounts, reports, files and other records
30 relating to this Agreement shall be subject at all reasonable times to inspection
31 and audit by the State for five years after completion. Such records shall be
32 designated by the State Forester or Auditor.
33
34 C. Pursuant to A.R.S. § 35-214, upon request of the State, records shall be
35 produced at the Arizona State Land Department, 1616 W. Adams, Phoenix,
36 Arizona 85007.
37
38

39 **Duration of Agreement:** The term of this Agreement shall be five (5) years. This
40 Agreement shall not become effective until approved by the Office of the Arizona
41 Attorney General. This Agreement shall remain in full force and effect for the term
42 unless terminated. Upon reaching the term of five years, this agreement will expire
43 unless extended.
44
45

1 **Termination.**

2
3 Participation in this Joint Powers Agreement may be terminated by any Cooperating
4 Agency named in this Agreement by notification in writing to all other cooperating
5 agencies at least 90 days prior to the intended date of termination. Termination will not
6 nullify obligations already incurred for performance or failure to perform prior to the date
7 of termination.
8

9 **Amendment.**

10
11 This Joint Powers Agreement shall not be altered, changed, or amended except by
12 instrument in writing executed by the agencies hereto.
13

14 **Term and Conditions.**

- 15
16
17 A. This Joint Powers Agreement shall not become effective until reviewed by the
18 Office of the Arizona Attorney General, signed by the parties hereto, and filed
19 with the Office of Secretary of State. Nothing contained herein shall be construed
20 as binding any agency to this Agreement who has not signed this Agreement as
21 of the date it is filed with the Office of Secretary of State. This Agreement shall
22 be effective for five years after all signatures are obtained and the Agreement is
23 filed with the Secretary of State.
24

- 1 B. This Joint Powers Agreement shall be governed and interpreted by both the laws
2 of the State of Arizona and the Federal Government and administrative rules
3 promulgated thereunder.
4
- 5 C. This Joint Powers Agreement supersedes and replaces the Joint Powers
6 Agreement between the State of Arizona and the Federal Agencies of the
7 Departments of Agriculture and Interior with Fire Responsibilities, dated April 14,
8 1992. This Agreement in no way waives or modifies other existing agreements
9 for fire suppression between Cooperating Federal Agencies and nothing
10 contained in this Agreement shall be construed as requiring any reimbursement
11 as between Cooperating Federal Agencies.
12
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T

STATE OF ARIZONA z

ATTEST

Governor

Date

APPROVED

By

State Forester

Date 2/9/04

REVIEWED

In accordance with A.R.S 11-952, this Agreement has been reviewed by **the undersigned who has determined that this Agreement is in appropriate form and is within the powers grant d to the State**

By

Assistant Attorney General, Attorney for State Forester

Date 2-6-04

U.S. DEPARTMENT OF AGRICULTURE, FOREST SERVICE

APPROVED

By

Regional Forester
Southwestern

Date 02/04/2004

REVIEWED

The authority and format of this instrument has been reviewed and approved for signature:

USDA Forest Service
Agreement Specialist

Date 2/4/04

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UNITED STATES OF AMERICA

U.S.D_I., BUREAU OF LAND MANAGEMENT

By 
State Director, Arizona


Date 2/17/04

UNITED STATES OF AMERICA

U.S.D.I., BUREAU OF INDIAN AFFAIRS AGREEMENT No. AGH00040002


Western Regional Director,

Date 4/1/04

By 
Western Regional Contracting
Officer /

Date 04/04/04 24

UNITED STATES OF AMERICA
U.S.D.I., BUREAU OF INDIAN AFFAIRS

By Navajo Regional Director

Date

UNITED STATES OF AMERICA
U_S.D_I., NATIONAL PARK SERVICE

By 
Regional Director

Date 2/4/04

03/31/04 WSD 10:03 FAX

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1 UNITED STATE 4F AMERICA

. z U.S.D.L, U.S, FISH & WILDLIFE

4 By *H Dale Hall*
Regional Director

6

Date 3/2/04

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REVIEWED
11

12 By See attached memorandum dated 6/18/03

13 Field Solicitor, Southwest Region
14 Department of the Interior

15 6/18/03

16 Date

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18 19 20

EXHIBIT A

COST APPORTIONMENT AGREEMENT

This agreement is entered into as required in the Financial Plan, which is a supplemental document to the Arizona Joint Powers Agreement for Interagency Wildland Fire Protection, No.

1. Incident Name _____ Origin Date _____ Time _____

2. Township _____ Range _____ Section _____

3. Estimated Size _____ Acres at the time of this Agreement.

4. Estimated Cost \$ _____ at the time of this Agreement.

5. Agency _____ Fire Number _____

Agency _____ Fire Number _____

Agency _____ Fire Number _____

Agency _____ Fire Number _____

6. This Agreement becomes effective on _____ at

_____ and remains in effect until _____ or until

otherwise amended or terminated.

7. Agency Representatives participating in development of this Agreement:

State Agency _____ Lead Federal Agency _____

Name _____ Name _____

Title _____ Title _____

Other Agency _____ Other Agency _____

Name _____ Name _____

Title _____ Title _____

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2 **8.** Unless otherwise justified in item 9 below, the default apportionment shall be as follows:
3 Suppression costs for multi-jurisdictional fires shall be shared based upon the Jurisdictional
4 Agencies percentage of area (acreage) affected by the fire. **It is hereby agreed that the cost on**
5 **this Incident shall be apportioned as follows:**
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7 _____
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9 _____
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11 _____
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13 **9.** Departures to this approach (Item 8) may be made by mutual agreement as described below:
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15 _____
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19 _____
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21 _____
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23 _____
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25 10. This Agreement, and the apportionment indicated, are our best judgments of Agency cost
26 responsibilities for this incident on the date/time shown. Future amendments to this
27 Apportionment Agreement may be necessary, as conditions and fire spread change. The State
28 Forester may enter into cost-share agreements with a Lead Cooperating Federal Agency on
29 behalf of the State for amounts not exceeding \$10,000,000 in appropriated and allotted monies
30 for the purposes specified in the Agreement. Cost-share agreements exceeding \$10,000,000 in
31 appropriated and allotted monies for the purposes specified in the Agreement must be approved
32 by the Governor. All provisions of the Joint Powers Agreement between the State of Arizona
33 and the Federal Land Management Agencies of the Department of Interior and the USDA Forest
34 Service, dated January, 2004, are incorporated hereinafter by reference as if specifically
35 included herein.
36
37

38 Signature _____ Signature _____
39
40 Agency _____ Agency _____
41
42 Date _____ Date _____
43
44 Telephone _____ Telephone _____
45

EXHIBIT B
FINANCIAL PLAN

Indirect Rates for Overhead and Administration: Indirect rates for overhead and administration costs shall be based on the Agency's direct costs that are incurred pursuant to this Agreement and computed as follows:

Direct Costs	Indirect Rate
A. Less than or equal to \$250,000.00:	5%
B. Between \$250,000.00 and \$1,000,000	the greater of \$12,500.00 or 3%
C. Greater than \$1,000,000	the greater of \$30,000 or 1%

Interim or Partial Payments. The Arizona State Land Department may periodically request interim payments from the Cooperating Federal Agencies for reimbursable costs for State Agency Resources used by the Cooperating Federal Agencies. These costs are not to exceed \$3 million dollars per year per agency. If annual costs are expected to exceed \$3 million dollars for one of the Cooperating Federal Agencies, the State Land Department will seek prior written approval from that Cooperating Federal Agency. The State Land Department will request interim payments whenever estimated reimbursable costs exceed \$25,000 or every 30 days, whichever occurs most frequently, but no later than December 20, March 20, June 20 and September 20. The State Land Department's requests for interim payments will be submitted via Fax to the designated billing office of the Cooperating Federal Agency. The original signed document will follow immediately in the mail to designated billing office of the Cooperating Federal Agency.

The State Land Department will provide the Cooperating Federal Agency with a breakdown of estimated costs by the following categories: salaries, travel and per diem, equipment use, and other expenses. The cost breakdown will include the dates of service. Cost will be broken down by assigned incident number.,

The Cooperating Federal Agencies agree to issue electronic interim payments to the State Land Department within seven working days of receipt of the signed original interim bills from the State.

Billing Addresses:

All bills for services provided to the State shall be mailed to the following address for payment:

**Arizona State Land Department
Attn: State Fire Management Officer
2901 West Pinnacle Peak Road
Phoenix, AZ 85027-1002**

All bills for services provided to the USDA Forest Service, Southwest Region, Forests within the State of Arizona shall be mailed to:

**USDA Forest Service- Tonto National Forest
Attn: Fiscal Office
2324 E. McDowell Road
Phoenix, AZ 85006
Fax: 602-225-5295**

All bills for services provided to the Department of the Interior/BIA, Navajo Regional Office shall be mailed to:

**USDI Bureau of Indian Affairs
Attn: Regional Director Navajo Regional Office
Branch of Forestry
Mail Drop: 410
P.O. Box 1060
Gallup, NM 87305**

All bills for services provided to the Department of the Interior/BIA, Southwestern Regional Office shall be mailed to:

**USDI Bureau of Indian Affairs
Attn: Regional Director
Southwest Regional Office Branch of Forestry
PO Box 26567
Albuquerque NM 87125-6567**

All bills for services provided to the Department of the Interior/BLM within the State of New Mexico shall be mailed to:

**USDI Bureau of Land Management
Attn: State Fire Management Officer Arizona State Office
222 North Central Avenue
Phoenix, AZ 85004-2203**

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2 All bills for services provided to the Department of the Interior/Fish and Wildlife Service within
3 the State of New Mexico shall be mailed to:
4

5 **USDI U.S. Fish and Wildlife Service**
6 **Attn: Regional Director Southwestern Regional Office**
7 **P.O. Box 1306**
8 **Albuquerque, NM 87103**
9

10 All bills for services provided to the Department of the Interior/NPS within the State of New
11 Mexico shall be mailed to:
12

13 **USDI National Park Service**
14 **Attn: Regional Director**
15 **Intermountain Regional Office**
16 **12795 West Alameda Parkway**
17 **P.O. Box 25287**
18 **Denver, CO 80225-0287**
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Amendment No. 1 to Cooperative Agreement No. 04-
CA-11031600-022 between USDA Forest Service,
Southwestern Region and Arizona State Land
Department

THIS AMENDMENT is entered into under the provisions of the Interior and Related
Agencies Appropriation Act for Fiscal Year 2004 (P.L. 108-108.)

1. Purpose of this Amendment:

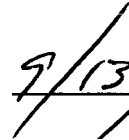
The purpose of this amendment is to provide authority for State and Fire Department
employees and resources to be utilized on assignments to Presidentially Declared
emergencies during Fiscal Year 2004. For FEMA-declared incidents all costs related to
participation by the State or Fire Department employees (e.g., reimbursement of base-8,
overtime, travel, and other support costs) and resources used by the State will be
reimbursed by the Forest Service under the authority of this Agreement.

Except as set forth above, all other terms and conditions of the referenced Agreement
shall remain the same, unchanged, and in full force and effect.



LUCIA M. TURNER
Deputy Regional Forester

Date



KIRK ROWDABAUGH
State Forester

Date

